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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/889,019	11/30/2001	Andrew Joseph Keogh	063511/9043	4717

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EXAMINER

TRAN LIEN, THUY

ART UNIT PAPER NUMBER

1761

DATE MAILED: 09/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/889,019

Applicant(s)

KEOGH, ANDREW JOSEPH

Examiner

Lien T. Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 June 2006.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 24-35, 37, 38, 40-47, 53-57 and 61-63 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 24-34, 37, 38, 40-47, 53-57 and 61-63 is/are rejected.  
7) ☒ Claim(s) 35 is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_.

The 112 second paragraph rejection is hereby withdrawn.

Claims 24,25-29,31-34,37,38,40-43,45-47, 53-56, 61-63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bisson et al.

Bisson et al disclose a process of making puffed product. The process comprises the steps of forming mixture of materials and passing the mixture through an extruder having temperature in the range of 30-70 degree C in the barrel, 40-100 degreeC in the nozzle and under pressure. The paste-like material issuing from the extruder is passed into an enclosure where a subatmospheric pressure prevails. The enclosure has a pressure of from 2-71kPa( .02-.7atms). The paste-like material expands in the enclosure by evaporation of the water. The strand issuing from the extruder nozzle may be cut up into rods, pellets or chip. Alternative, the extruded strand may be discharged into a space where atmospheric pressure prevails. The temperature in the extruder imparts to the materials the plasticity required for passing smoothly through the bores in the nozzle. The product obtained can be seasoned, sweetened, flavoured or coloured. The puffed product may be impregnated with a fat, syrup, liquor or an alcohol. The mixture used to form the food product contains water. (see col. 2-3)

Bisson et al do not disclose using a belt conveyor, the foodstuff is a confectionery, forming the composition into balls, the second temperature being lower than the first temperature.

The limitation of the first temperature and pressure being in a region outside of the extruder does not define over Bisson et al. The materials in Bisson et al are passed through an extruder and a paste-like material is formed emerging from the

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extruder. After the paste material exists the extruder, it is obvious that the paste has a certain temperature because the material is heated inside the extruder; this is equivalent to the first temperature. As the paste exists the extruder, it comes out; thus, the pressure is changed to atmospheric pressure. This is equivalent to the first pressure. With respect to claims 24, 38, the materials in the Bisson process is heated in an extruder to a temperature in the range of 30-100 degree C. As the material exists the extruder, the composition would still have the temperature it is heated to inside the extruder because no cooling take places. The paste is then passed into an enclosure where a subatmospheric pressure prevails. This is equivalent to the claimed setting region. It would have been obvious to make the temperature here lower because Bisson et al disclose the temperature falls to cause puffing and rigidification of the cellular structure. It would have been obvious to one skilled in the art to determine the appropriate temperature and pressure depending on the substance being puffed and the degree of puffing through routine experimentation. It would have been obvious to use a belt conveyor to transport the composition to the enclosure where expansion takes place. The use of the conveyor belt enhances the speed of the process. It would also have been obvious to make a confectionery product because Bisson et al disclose various compositions can be made and materials such as syrup, sweetening agent can be added. The addition of sugar will make the product to be a confectionery product.

Claims 30,44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bisson et al in view of Forkner.

The teaching of Bisson is described above.

Bisson does not disclose adding a chemical expanding agent.

Forkner discloses expanded confections. He teaches to add chemical expanding agent to aid in the expansion. (See col. 6 lines 45-50)

It would have been obvious to add a chemical expanding agent as taught by Forkner in the composition of Bisson to aid in the expansion of the food product.

Claim 35 is free of prior art because there is no teaching that the paste is being heated to the first temperature in a region outside of the extruder.

In the response filed 6/16/06, applicant argues the extrusion temperature of Bisson is not equivalent to the claimed first temperature. This argument is not persuasive. It is not stated that the extrusion temperature is equivalent to the claimed first temperature. It is stated in the rejection that the temperature at which the material possesses after it is exist from the extruder is equivalent to the claimed first temperature because the material from inside the extruder is passed to the outside of the extruder before it enters the enclosure. This material will have a first temperature and first pressure which is a pressure outside of the extruder. The claims require that the foodstuff at a first temperature and first pressure and the foodstuff in Bisson after it exists the extruder is at a first temperature and first pressure. Applicant argues that in the Bisson process the expanded dough is not subjected to a second region. This argument is not persuasive because Bisson teaches passing the foodstuff existing from the extruder to an enclosure where sub-atmospheric pressure prevails; this is the second pressure. Bisson also teaches that the temperature of the foodstuff falls; thus, it would have been obvious to make the temperature in the enclosure to be less than the

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foodstuff or to quicken the falling of the temperature of the foodstuff. Furthermore, Bisson does not disclose that the enclosure is heated; thus, it is obvious that the enclosure is at ambient temperature which is less than the temperature of the foodstuff. Applicant makes the same argument with respect to claims 62 and 63 which is not found to be persuasive. The food composition does not contain a vaporizable expanding agent because it contains water which is one of the vaporizable expanding agent claimed. When the foodstuff exists the extruder, it is at atmospheric pressure.

Applicant's arguments filed 6/16/06 have been fully considered but they are not persuasive.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Monday, Wednesday-Thursday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cano Milton can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

September 4, 2006

  
LIEN TRAN  
PRIMARY EXAMINER  
